

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

UNITED STATES OF AMERICA,

Case No. 6:20-cr-00173-AA

6:12-cr-00081-AA

OPINION AND ORDER

v.

MICHAEL LEE FRY,

Defendant.

AIKEN, District Judge:

On March 11, 2021, following a status conference with the parties, the Court found, after also considering the factors outlined in 18 U.S.C. § 3161(h)(7)(B), that current conditions caused by the ongoing COVID-19 pandemic made proceeding to a jury trial in this matter on March 18, 2021 infeasible. Doc. 37. The Court ordered trial to be reset for June 15, 2021 and ordered that ninety days from March 19, 2021 through June 17, 2021 be excluded under the Speedy Trial Act pursuant to the end-

of-justice exception. *See* 18 U.S.C. § 3161(h)(7). This formal order is issued to supplement that finding.¹

On May 19, 2021, Chief Judge Marco Hernandez issued a Fourth Amended Standing Order which reauthorized modified Court proceedings as provided by the C.A.R.E.S. Act of 2020. *See* Standing Order 2020-12 Fourth Amended. That order provides that court business and proceedings, including civil and criminal jury trials, are permitted “as long as they can be conducted in compliance with health advisories, without jeopardizing public health and safety.” *Id.*

On March 12, 2021, the Oregon Health Authority reduced Lane County’s COVID-19 risk level to moderate thought some restrictions on indoor gatherings remain in effect. The Court also notes that many other counties from which jurors would potentially be drawn remain at high or extreme risk levels. <https://public.tableau.com/profile/oregon.health.authority.covid.19#!/vizhome/OregonCOVID-19PublicHealthIndicators/Risk>. (last accessed on March 19, 2021 at 2:00 P.M.)

State-wide, over 930,000 people have been fully or partially vaccinated against COVID-19. <https://public.tableau.com/profile/oregon.health.authority.covid.19#!/vizhome/OregonCOVID-19VaccinationTrends/OregonStatewideVaccinationTrends>. (last accessed on March 19, 2021 at 2:15 P.M.). This represents a tremendous growth since the Court’s previous order excluding time and continuing the trial date in this

¹ The Court informed the parties at that hearing that it would enter this order following the issuance of a revised Standing Order by the Chief Judge for the District of Oregon.

case. Doc. 34. Currently, only 15% of Lane County's adult population has been fully vaccinated against the virus. <https://lanecounty.org/cms/One.aspx?portalId=3585881&pageId=17394364>. (last accessed May 19, 2021 at 2:04 P.M.)

Trends are promising that many more Oregonians will soon be vaccinated and that pandemic conditions may be under better control in coming months. However, at this time the Court reiterates its previous findings made on the record and finds that considering *current* conditions, as well as the factors outlined in 18 U.S.C. § 3161(h)(7)(B), it is not possible to proceed with a jury trial in this matter at this time.

For these reasons, the Court finds that a failure to continue the trial date in this case would likely result in a miscarriage of justice, as set forth in 18 U.S.C. § 3161(h)(7)(B)(i). Due to the Court's reduced ability to obtain an adequate spectrum of jurors, the impact of public health recommendations on Court operations, the Court specifically finds that the ends of justice served by continuing the trial in this case outweigh the best interest of the public and the defendant in a speedy trial. *See* 18 U.S.C. § 3161(h)(7)(A). Accordingly, the Court finds it appropriate to exclude time under this exception for 90 days as set forth in its previous minute order.

IT IS SO ORDERED.

Dated this 22nd day of March, 2021.

/s/Ann Aiken
Ann Aiken
United States District Judge